

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-10489-MEL

GLENN S. BATES,

Plaintiff

v.

TOWN OF HARWICH AND HARWICH
POLICE DEPARTMENT, CHRISTOPHER
KENDER, AND BARRY MITCHELL,

Defendants

PLAINTIFF'S EMERGENCY MOTION
TO MODIFY THIS COURT'S
DECEMBER 16, 2005 ORDER
REGARDING DEPOSITION SET FOR
JANUARY 23, 2006

Now comes Plaintiff Glenn Bates, through counsel, and moves, on an emergency basis, for this Court to slightly modify its December 16, 2005 Order so that Plaintiff's deposition may take place during the first week of February 2006 instead of on January 23, 2006.

Plaintiff cannot make the deposition as presently scheduled because he is indigent, is living in a boarding house in Franconia, New Hampshire and will not have funds available to travel to Boston until February 1, 2006. Despite being advised of this set of affairs, the individual defendants' counsel stated that he would not allow a continuance without Plaintiff filing a motion for protective order. Indeed, defendants intend to capitalize on Plaintiff's vulnerable position by seeking sanctions should Plaintiff fail to appear for the deposition on January 23, 2006.

This is an unfair position to take given that the individual defendants were themselves allowed to appear at their depositions at times convenient to them through informal agreement of Plaintiff's counsel. Defendants' position is also inappropriately opportunistic because this Court's Order for the deposition to occur on January 23, 2005 was not made because of any

discovery failures, but because Plaintiff *assented* to Defendants' motion to hold the deposition in the Courthouse at Defendants' counsel's request and for *his* convenience.

Given that Plaintiff agrees to appear for his deposition in just a matter of weeks, Defendant's counsel's position is an utter waste of this Court's time and resources.

WHEREFORE, Plaintiff requests that this Court slightly modify its December 16, 2005 Order so that Plaintiff's deposition may take place during the first week of February 2006 instead of on January 23, 2006

Respectfully submitted,

PLAINTIFF GLENN BATES,

By his attorneys,

_____/s/ Timothy J. Perry_____
Timothy J. Perry (BBO# 631397)
Gregory T. Donoghue (BBO# 661480)
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the foregoing document to be served this date upon counsel of record by causing same to be placed in the United States Mail, First Class, postage pre-paid.

Dated: January 19, 2005

_____/s/ Timothy J. Perry_____

LOCAL RULE 7.1(A)(2) CERTIFICATE

Pursuant to Local Rule 7.1(A)(2), the undersigned counsel certifies that he attempted to confer by telephone with defendants' counsel on January 19, 2006 in a good faith attempt to resolve the issues presented in this motion. Defendant's counsel refused to continue Plaintiff's deposition without an Order from the Court.

Dated: January 20, 2006

_____/s/Timothy J. Perry_____